

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MICHAEL DWAYNE COLEMAN

§

§ CIVIL ACTION NO. 6:06cv354

MS. VACANTE, ET AL.

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Michael Coleman, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Coleman sued individuals at various prison units and facilities, including the Hamilton Unit, the Coffield Unit, an intermediate sanction facility in Pampa, and “all medical officials of UTMB, Galveston, Texas.” He says that the medical officials at each facility have failed to give him the right kind of shoe, instead making him wear rubber-toed boots. Of these facilities, only the Coffield Unit is within the Eastern District of Texas.

On November 21, 2006, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed. The Magistrate Judge observed that Coleman has a long history of filing frivolous lawsuits, and that he has filed at least three lawsuits which have been dismissed as frivolous or for failure to state a claim upon which relief may be granted. As a result, Coleman must pay the full filing fee for his lawsuit or show that he is in imminent danger of serious bodily injury for his lawsuit to proceed, but he has done neither of these. As a result, the Magistrate Judge recommended that the lawsuit be dismissed. The Magistrate Judge further recommended that

Coleman's claims arising outside of the Eastern District of Texas be dismissed without prejudice as brought in a court of improper venue.

A copy of this Report was sent to Coleman at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Reports of the Magistrate Judge are correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's *in forma pauperis* status is REVOKED and that the Plaintiff's claims concerning the medical care which he received at the Coffield Unit are hereby DISMISSED with prejudice as to the refiling of another *in forma pauperis* lawsuit raising these same claims, but without prejudice as to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the full \$350.00 filing fee. It is further

ORDERED that the Plaintiff's claims concerning his medical care at the Hamilton Unit and the intermediate sanctions facility in Pampa, and his claims concerning medical personnel at UTMB Hospital in Galveston are hereby DISMISSED without prejudice as brought in a court of improper venue. 28 U.S.C. §1406(a). Coleman may refile these claims in the proper court, but is reminded that he must satisfy the requirements of 28 U.S.C. §1915(g) should he refile these claims. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 15th day of December, 2006.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS", is written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**